

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE PORK ANTITRUST LITIGATION

Case No. 18-cv-1776 (JRT/HB)

This Document Relates To: All Actions

JOINT UPDATE LETTER FOR JANUARY 31, 2022 STATUS CONFERENCE

Pursuant to the Court's Order Setting Case Management Conference dated December 20, 2021 (ECF No. 1072), the parties in these cases submit this Joint Update Letter for the status conference set before Magistrate Judge Bowbeer at 1:00 PM on January 31, 2022.

I. Hearing on Proposed Case Management Order for MDL DAP Cases

The parties in the MDL Direct Action Plaintiffs cases have had no further discussions on these issues since submitting their Joint Statement on December 10, 2021 (ECF No. 1046), but will be prepared to discuss those issues during the status conference. The parties respectfully refer the Court to the Joint Statement for their positions on those issues.

II. Status of Discovery

A. Depositions:

Joint Statement: All Plaintiffs collectively began taking depositions of Defendants' current and former employees on December 1, 2021. Plaintiffs have presently taken seven depositions, and by the January 31 status conference, will have taken ten depositions. Additional depositions are scheduled, and are in the process of being scheduled, in February and March. Most depositions have proceeded remotely.

The first deposition of a Plaintiff, a Consumer Indirect Purchaser Plaintiff, is scheduled for January 25. Defendants expect to notice depositions of additional Plaintiffs and to subpoena third parties for depositions soon.

There are no disputes or issues related to depositions that require Court intervention at this time.

B. Structured Data and Data Questions:

Plaintiffs’ Statement: Defendants represent that they have substantially completed their data productions to the Classes. They are still in the process of producing additional data in response to requests from the DAPs. Although the productions are represented as “substantially complete,” there still remain a number of pieces of unavailable data. For example, two Defendants (JBS and Clemens) do not have readily accessible pre-conduct sales data. The parties are meeting and conferring for the experts to understand the data. Plaintiffs have sent, and Defendants have responded to, numerous sets of letters with detailed technical questions regarding the fields and content of the data sets. Defendants are in the process of responding to some remaining sets of questions and letters.

Defendants’ Statement: Defendants substantially completed their respective productions of structured data in or prior to September 2021. Plaintiffs have sent Defendants letters containing hundreds of data interpretation questions, and Defendants have supplied answers on a rolling basis.¹ Given the breadth and complexity of the questions posed and the fact that the questions relate to a multitude of current and historic data systems for various separate business divisions, this has been a difficult and time-consuming exercise. Defendants will continue to engage with Plaintiffs in good faith regarding their specific data questions.

C. Validation:

Class Plaintiffs’ Statement: The parties are conferring about Defendants’ validation of their search methodologies (e.g., the use of technology assisted review (“TAR”) and/or search terms). Those meet and confers generally began around the time Defendants substantially completed their document productions.

The various Defendants are situated differently with respect to validation. Certain Defendants have provided all the information requested by Plaintiffs, while others, for instance, are still completing their validation process. Some require further discussion about the information requested by Plaintiffs and Defendants’ willingness to provide it.

Plaintiffs are mindful that the Court expressed its preference at the June 4, 2021 status conference to resolve disputes related to validation on a focused factual record rather than through entry of a more general order, as Plaintiffs initially sought (*see* ECF Nos. 534, 534-1). Plaintiffs will continue to meet and confer with each Defendant and hope to avoid the need for Court intervention as to any Defendant. Should any disputed issues require

¹ JBS USA has undertaken the restoration of a backup tape to access earlier sales data and, absent any issues, anticipates producing pre-conduct sales data covering April 2007 through 2009 in the next few weeks.

Court intervention, Plaintiffs will work with each relevant Defendant to raise those with the Court in a timely and orderly manner.

Defendants' Statement: Defendants have supplied answers to the questions they have received about their validation processes and are not aware of any outstanding disputes. Defendants are willing to continue to meet and confer to the extent that Plaintiffs continue to have questions regarding specific Defendants' validation processes.

D. Defendants' Responses to MDL DAPs' First Request for Production of Documents:

MDL DAPs' and Defendants' Joint Statement: The MDL DAPs received Defendants' responses to their First Request for Production of Documents (the "RFPs") on November 21, 2021. Since then the MDL DAPs have been reviewing those responses, as well as the documents and data produced by Defendants. The MDL DAPs have exchanged correspondence with Defendants regarding Defendants' responses to the MDL DAPs' RFPs and their document and structured data productions, and the MDL DAPs have held meet and confers with a number of the Defendants individually, and certain aspects of those discussions remain ongoing. Those discussions have focused on: the MDL DAPs' requests for additional information or clarification as to what Defendants have already produced in response to Class Plaintiffs' requests for production; information that the MDL DAPs believe was not covered by requests for production propounded by the various plaintiff classes; and on the MDL DAPs' efforts to ensure the completeness of the Defendants' structured data productions related to pork sales and production. The parties are continuing to meet and confer and expect discussions to conclude in the next few weeks. To the extent any dispute about any specific Defendant's responses to the MDL DAPs' RFPs arises and cannot be resolved by agreement, the MDL DAPs will bring those issues to the Court for resolution.

E. Plaintiffs' Responses to Defendants' Interrogatories:

Class Plaintiffs' and Defendants' Joint Statement: Defendants' Second Set of Interrogatories to Class Action Plaintiffs² ask the Class Plaintiffs to identify "every Current or Former Employee of any Defendant, including but not limited to every Current or Former Employee of JBS, who provided You with facts, Documents or other information relating to the allegations in the Complaint, including but not limited to facts, Documents, or information provided in accordance with any Settlement Agreement, and Describe what facts, Documents or information each Current or Former Employee provided to You." Class Plaintiffs have objected on various grounds, including breadth, privilege, attorney

² All Defendants except JBS served the Second Set of Interrogatories on the Commercial and Institutional Indirect Purchaser Class and Consumer Indirect Purchaser Class, and All Defendants except JBS and Smithfield served the Second Set of Interrogatories on the Direct Purchaser Class.

work product, that the interrogatories impermissibly interfere with confidential cooperation provisions of their settlement agreements. Defendants do not believe that Class Plaintiffs have a legal basis to withhold the requested information, taking the position that the information is not privileged or otherwise protected. The parties held an initial meet and confer conference on January 20, 2022 and agreed to continue to meet and confer on these issues.

The parties also continue to meet and confer regarding Defendants' First Set of Interrogatories to Class Plaintiffs. Class Plaintiffs have objected to many these requests as premature contention interrogatories. Defendants' view is that a number of Defendants' interrogatories are not contention interrogatories, that contention interrogatories are permissible, and that Plaintiffs have an obligation to answer them in a reasonable time period, as with any other discovery. Fed. R. Civ. P. 33(a)(2).

To the extent the parties are unable to resolve their dispute, they will submit it to the Court for resolution.

F. The MDL DAPs' Document Productions:

MDL DAPs' Statement: The MDL DAPs were, until the parties' January 14, 2022 conference call to discuss the agenda for the upcoming conference, unaware of Defendants' concerns regarding the status and timing of certain MDL DAPs' structured-data and document productions. Since Defendants raised this issue for the first time during that conference call, outside of the ongoing negotiations with respect to document custodians, the Defendants have not identified any specific concern as to any MDL DAP's production. On January 20, 2022, the Defendants emailed MDL DAP counsel seeking confirmation as to which MDL DAPs anticipated substantially completing their document productions by January 31, 2022; counsel for the relevant MDL DAPs have responded, or will soon respond, to Defendants' query as to their clients.

Defendants' Statement: Only two MDL DAPs—Amory Investments, LLC and Sysco Corporation—have made material productions of unstructured documents to date. Defendants have asked each MDL DAP with passed or impending production deadlines to confirm that they will substantially complete production by the January 31, 2022 or other applicable deadline set forth in the parties' proposed order at ECF No. 1046-1. Many MDL DAPs have so confirmed; others have requested extensions, to which Defendants expect to agree. Defendants will be prepared to raise issues as necessary to avoid impacting the case schedule or to address other problems with the timing or content of these productions at the January 31 status conference.

G. Production of DPP Class Member Purchase Information:

Joint Statement: Direct Purchaser Plaintiffs ("DPPs") have requested that the non-settling Defendants provide additional information regarding pork purchases that fall

within the settlement class definition of the Smithfield and JBS settlements in order to facilitate distribution of the settlement proceeds. DPPs and the non-settling Defendants held a global conference regarding this issue on January 21, 2022 and have agreed to continue conferring to see if they can reach an agreement. If the parties are unable to reach an agreement, DPPs will present this issue to the Court as part of their motion for approval of the DPP settlement class claims distribution process, which they anticipate will be filed by the end of January.

III. STATUS OF PENDING MOTIONS

The parties have not had further discussions regarding Class Plaintiffs' Motion to Compel Hormel to Produce Responsive Text Message Content and Enforce Subpoenas to Hormel Custodians but will be prepared to discuss additional information the Court may request.

IV. ADDITIONAL STATUS CONFERENCE ATTENDEES

The full list of anticipated attendees for the Defendants at the January 31 status conference is shown below with likely speakers in bold:

Agri Stats: **Liam Phibbs**
 Clemens: **Vanessa Barsanti** and Max Samels
 Hormel: **Craig Coleman** (also speaking on DPPs' request for additional transactional data for settlement purposes)
 JBS: **Sami H. Rashid** and Jessica Nelson
 Seaboard: **Pete Schwingler**
 Smithfield: **Brian Robison** (also speaking on MDL DAPs' document productions) and John Cotter
 Triumph: **Chris Smith** (also speaking on Plaintiffs' interrogatory responses) and Jason Husgen
 Tyson: Tiffany Rohrbaugh Rider and **Jarod Taylor** (also speaking on the proposed Case Management Order for MDL DAPs and validation protocols)

DATED: January 24, 2022

Respectfully submitted,

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